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8  
9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11

12  
13 SECURITIES AND EXCHANGE  
14 COMMISSION,

15 Plaintiff,

16 vs.

17 JOHNNY TSENG (a/k/a Kuanhao J.  
18 Tseng, Kuanhao Tseng), KEVIN  
19 ZHANG (a/k/a Kevin Huapeng Zhang,  
20 Huapeng Zhang), and  
21 SUMMITCREST CAPITAL, INC.,

22 Defendants.  
23  
24  
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26  
27  
28

Case No.

**CONSENT OF DEFENDANT  
SUMMITCREST CAPITAL, INC.**

1           1. Defendant Summitcrest Capital, Inc. (“Defendant”) waives service of a  
2 summons and the complaint in this action, enters a general appearance, and admits  
3 the Court’s jurisdiction over Defendant and over the subject matter of this action.

4           2. Without admitting or denying the allegations of the complaint (except as  
5 provided herein in paragraph 12 and except as to personal and subject matter  
6 jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the  
7 Final Judgment in the form attached hereto (the “Final Judgment”) and incorporated  
8 by reference herein, which, among other things:

- 9           (a) permanently restrains and enjoins Defendant from violation of  
10           Section 5 of the Securities Act of 1933 (the “Securities Act”) [15  
11           U.S.C. § 77e]; Section 17(a) of the Securities Act [15 U.S.C. §  
12           77q(a)]; and Section 10(b) of the Securities Exchange Act of 1934  
13           (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5  
14           promulgated thereunder [17 C.F.R. § 240.10b-5];  
15           (b) permanently restrains and enjoins Defendant from, directly or  
16           indirectly, including, but not limited to, through any entity owned  
17           or controlled by Defendant, participating in the issuance,  
18           purchase, offer, or sale of any security, pursuant to Section  
19           21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)];  
20           (c) orders Defendant to pay disgorgement in the amount of  
21           \$16,600,000.00, plus prejudgment interest thereon in the amount  
22           of \$4,349,481.52, on a joint and several basis, pursuant to  
23           Sections 21(d)(5) and 21(d)(7) of the Exchange Act [15 U.S.C.  
24           § 78u(d)(5) and 15 U.S.C. § 78u(d)(7)]; and  
25           (d) orders Defendant to pay a civil penalty in the amount of  
26           \$2,232,280.00 under Section 20(d) of the Securities Act [15  
27           U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15  
28           U.S.C. § 78u(d)(3)].

1           3. Defendant acknowledges that the civil penalty paid pursuant to the Final  
2 Judgment may be distributed pursuant to the Fair Fund provisions of Section 308(a)  
3 of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund  
4 distribution is made, the civil penalty shall be treated as a penalty paid to the  
5 government for all purposes, including all tax purposes. To preserve the deterrent  
6 effect of the civil penalty, Defendant agrees that it shall not, after offset or reduction  
7 of any award of compensatory damages in any Related Investor Action based on  
8 Defendant's payment of disgorgement in this action, argue that it is entitled to, nor  
9 shall it further benefit by, offset or reduction of such compensatory damages award  
10 by the amount of any part of Defendant's payment of a civil penalty in this action  
11 ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty  
12 Offset, Defendant agrees that it shall, within 30 days after entry of a final order  
13 granting the Penalty Offset, notify the Commission's counsel in this action and pay  
14 the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as  
15 the Commission directs. Such a payment shall not be deemed an additional civil  
16 penalty and shall not be deemed to change the amount of the civil penalty imposed in  
17 this action. For purposes of this paragraph, a "Related Investor Action" means a  
18 private damages action brought against Defendant by or on behalf of one or more  
19 investors based on substantially the same facts as alleged in the Complaint in this  
20 action.

21           4. Defendant agrees that it shall not seek or accept, directly or indirectly,  
22 reimbursement or indemnification from any source, including but not limited to  
23 payment made pursuant to any insurance policy, with regard to any civil penalty  
24 amounts that Defendant pays pursuant to the Final Judgment, regardless of whether  
25 such penalty amounts or any part thereof are added to a distribution fund or otherwise  
26 used for the benefit of investors. Defendant further agrees that it shall not claim,  
27 assert, or apply for a tax deduction or tax credit with regard to any federal, state, or  
28 local tax for any penalty amounts that Defendant pays pursuant to the Final

1 Judgment, regardless of whether such penalty amounts or any part thereof are added  
2 to a distribution fund or otherwise used for the benefit of investors.

3 5. Defendant waives the entry of findings of fact and conclusions of law  
4 pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5 6. Defendant waives the right, if any, to a jury trial and to appeal from the  
6 entry of the Final Judgment.

7 7. Defendant enters into this Consent voluntarily and represents that no  
8 threats, offers, promises, or inducements of any kind have been made by the  
9 Commission or any member, officer, employee, agent, or representative of the  
10 Commission to induce Defendant to enter into this Consent.

11 8. Defendant agrees that this Consent shall be incorporated into the Final  
12 Judgment with the same force and effect as if fully set forth therein.

13 9. Defendant will not oppose the enforcement of the Final Judgment on the  
14 ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of  
15 Civil Procedure, and hereby waives any objection based thereon.

16 10. Defendant waives service of the Final Judgment and agrees that entry of  
17 the Final Judgment by the Court and filing with the Clerk of the Court will constitute  
18 notice to Defendant of its terms and conditions. Defendant further agrees to provide  
19 counsel for the Commission, within thirty days after the Final Judgment is filed with  
20 the Clerk of the Court, with an affidavit or declaration stating that Defendant has  
21 received and read a copy of the Final Judgment.

22 11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims  
23 asserted against Defendant in this civil proceeding. Defendant acknowledges that no  
24 promise or representation has been made by the Commission or any member, officer,  
25 employee, agent, or representative of the Commission with regard to any criminal  
26 liability that may have arisen or may arise from the facts underlying this action or  
27 immunity from any such criminal liability. Defendant waives any claim of Double  
28 Jeopardy based upon the settlement of this proceeding, including the imposition of

1 any remedy or civil penalty herein. Defendant further acknowledges that the Court's  
2 entry of a permanent injunction may have collateral consequences under federal or  
3 state law and the rules and regulations of self-regulatory organizations, licensing  
4 boards, and other regulatory organizations. Such collateral consequences include, but  
5 are not limited to, a statutory disqualification with respect to membership or  
6 participation in, or association with a member of, a self-regulatory organization. This  
7 statutory disqualification has consequences that are separate from any sanction  
8 imposed in an administrative proceeding. In addition, in any disciplinary proceeding  
9 before the Commission based on the entry of the injunction in this action, Defendant  
10 understands that it shall not be permitted to contest the factual allegations of the  
11 complaint in this action.

12 12. Defendant understands and agrees to comply with the terms of 17 C.F.R.  
13 § 202.5(e), which provides in part that it is the Commission's policy "not to permit a  
14 defendant or respondent to consent to a judgment or order that imposes a sanction  
15 while denying the allegations in the complaint or order for proceedings," and "a  
16 refusal to admit the allegations is equivalent to a denial, unless the defendant or  
17 respondent states that he neither admits nor denies the allegations." As part of  
18 Defendant's agreement to comply with the terms of Section 202.5(e), Defendant: (i)  
19 will not take any action or make or permit to be made any public statement denying,  
20 directly or indirectly, any allegation in the complaint or creating the impression that  
21 the complaint is without factual basis; (ii) will not make or permit to be made any  
22 public statement to the effect that Defendant does not admit the allegations of the  
23 complaint, or that this Consent contains no admission of the allegations, without also  
24 stating that Defendant does not deny the allegations; and (iii) upon the filing of this  
25 Consent, Defendant hereby withdraws any papers filed in this action to the extent that  
26 they deny any allegation in the complaint. If Defendant breaches this agreement, the  
27 Commission may petition the Court to vacate the Final Judgment and restore this  
28 action to its active docket. Nothing in this paragraph affects Defendant's:

1 (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or  
2 other legal proceedings in which the Commission is not a party.

3 13. Defendant hereby waives any rights under the Equal Access to Justice  
4 Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other  
5 provision of law to seek from the United States, or any agency, or any official of the  
6 United States acting in his or her official capacity, directly or indirectly,  
7 reimbursement of attorney's fees or other fees, expenses, or costs expended by  
8 Defendant to defend against this action. For these purposes, Defendant agrees that  
9 Defendant is not the prevailing party in this action since the parties have reached a  
10 good faith settlement.

11 14. In connection with this action and any related judicial or administrative  
12 proceeding or investigation commenced by the Commission or to which the  
13 Commission is a party, Defendant (i) agrees to appear and be interviewed by  
14 Commission staff at such times and places as the staff requests upon reasonable  
15 notice; (ii) will accept service by mail or facsimile transmission of notices or  
16 subpoenas issued by the Commission for documents or testimony at depositions,  
17 hearings, or trials, or in connection with any related investigation by Commission  
18 staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of  
19 such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives  
20 the territorial limits on service contained in Rule 45 of the Federal Rules of Civil  
21 Procedure and any applicable local rules, provided that the party requesting the  
22 testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-  
23 prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction  
24 over Defendant in any United States District Court for purposes of enforcing any  
25 such subpoena.

26 15. Defendant agrees that the Commission may present the Final Judgment  
27 to the Court for signature and entry without further notice.  
28



1 16. Defendant agrees that this Court shall retain jurisdiction over this matter  
2 for the purpose of enforcing the terms of the Final Judgment.

3  
4 Dated: 7/17/2023

Summitcrest Capital, Inc.

5  
6 By: [Signature]  
7 Johnny Tseng  
8 President/Chief Executive Officer  
9 13089 Peyton Drive #C290  
10 Chino Hills, California 91709

11 On \_\_\_\_\_, 202\_\_, \_\_\_\_\_, a person known to  
12 me, personally appeared before me and acknowledged executing the foregoing  
13 Consent.

14  
15 See Attached Acknowledgment  
16 Notary Public  
17 Commission expires:  
18

19 Approved as to form:

20  
21 [Signature]  
22 Andrew B. Holmes  
23 Holmes, Taylor, Athey, Cowan, Mermelstein & Jones LLP  
24 811 Wilshire Boulevard, Suite 1460  
25 Los Angeles, California 90017  
26 Tel: (213) 985-2200  
27 Email: [abholmes@holmestaylor.com](mailto:abholmes@holmestaylor.com)

28 Attorney for Defendant Summitcrest Capital, Inc.



# California All-Purpose Certificate of Acknowledge

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

S.S.

On July 17, 2023 before me, Sarah J. Waldrup, Notary Public

Name of Notary Public, Title

personally appeared Johnny Tseng

Name of Signer (1)

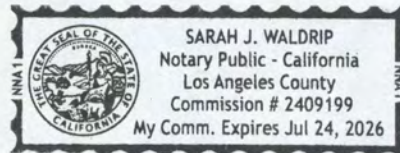
Name of Signer (2)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Sarah J. Waldrup  
Signature of Notary Public



Seal

## OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

## Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of Consent of

Defendant Summit Crest Capital

containing 7 pages, and dated July 17, 2023  
8 pgs. including Notary Acknowledgment

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)  
☐ Attorney-in-fact  
☐ Corporate Officer(s)

Title(s)

- ☐ Guardian/Conservator  
☐ Partner - Limited/General  
☐ Trustee(s)  
☐ Other:

representing:

Name(s) of Person(s) Entity(ies) Signer is Representing

## Additional Information

### Method of Signer Identification

Proved to me on the basis of satisfactory evidence:

- ☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:

Page # \_\_\_\_\_ Entry # \_\_\_\_\_

Notary contact: \_\_\_\_\_

Other

- ☐ Additional Signer ☐ Signer(s) Thumbprints(s)

☐ \_\_\_\_\_